

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Sterling Equity and Investment LLC,  
Thomas von Behren, Clarice von Behren,  
and Steven Benedict,

Case No. 0:16-cv-02474-SRN-KMM

Plaintiffs,

v.

**REPORT AND  
RECOMMENDATION**

Prideco Private Mortgage Loan Fund, LP;  
Patrick Holt; David Baker; United States  
Bankruptcy Court; Dakota County  
Attorney; and Dakota County Sheriff;

Defendants.

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Thomas von Behren and Clarice von Behren, 1412 Valley View Court, West St. Paul, MN 55118; Steven Benedict, 2901 W. 101st Street, Bloomington, MN 55431; pro se plaintiffs

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On December 16, 2016, this Court entered an Order to Show Cause. ECF No. 3. As noted in the Order to Show Cause, if a defendant is not served within 90 days after the complaint is filed, the Court must dismiss the action without prejudice against that defendant. Fed. R. Civ. P. 4(m). But if the plaintiff shows good cause for the failure of service, the Court must extend the period for service for an appropriate period. *Id.* Because the record reflected no proof that any defendant had been served within the 90-day period after the complaint was filed, the Court gave the plaintiffs a December 30, 2016 deadline to demonstrate good cause. ECF No. 3 at 2.

Here, plaintiffs were notified of a deficiency in service by the Court's Order to Show Cause. Plaintiffs failed to respond by the December 30, 2016 deadline established in that Order. Because plaintiffs have not responded, they have failed to show good cause for the failure to serve the complaint within the 90-day period established by Rule 4(m). There is also no showing of excusable neglect to warrant a discretionary extension of the time for service. In the absence of good cause

mandating an extension or excusable neglect justifying a discretionary extension, Rule 4(m) requires dismissal without prejudice. *See Kurka v. Iowa County, Iowa*, 628 F.3d 953, 957 (8th Cir. 2010) (explaining the distinction between mandatory and discretionary extensions under Rule 4(m)).

For the reasons stated, the Court recommends that this action be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m).

Date: January 5, 2017

s/ Katherine Menendez  
Katherine Menendez  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.